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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections 3(n)) GN Docket No. 93-252
and 332 of the Communications Act)
)
Regulatory Treatment of Mobile)
Services)

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF
PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC") hereby submits its reply comments to the Commission's Second Further Notice of Proposed Rule Making in the above-captioned proceeding.¹ The Commission seeks comment regarding whether non-equity relationships such as management, resale and joint marketing arrangements should be treated as attributable interests for the 40 MHz PCS spectrum cap ("PCS Cap"), the PCS-cellular cross-ownership rules, or the proposed 40 MHz Commercial Mobile Radio Service Spectrum Cap ("CMRS Cap").² The Commission also asks whether such attribution rules

1. 9 FCC Rcd ____ (FCC 94-191, rel. July 20, 1994) ("SFNPRM").

2. An August 9, 1994 FCC News Release (Report No. DC-2638) provides that in the Third Report and Order in this docket, the Commission is imposing a 45 MHz spectrum aggregation cap for the total amount of PCS, cellular and SMR spectrum in which a licensee may have an attributable interest.

(if any are adopted) should apply differently to designated entities. Like the overwhelming majority of commenters, PRTC opposes interest attribution in all three contexts, particularly where designated entities are parties to such agreements.

I. RESALE AGREEMENTS

Interest attribution for resale agreements under the PCS Cap, the PCS-cellular cross-ownership restrictions, or the CMRS Cap will not serve the public interest.³ Resellers cannot exercise effective control over the spectrum on which they provide service "because other resellers could enter into such resale arrangements."⁴ Indeed, since resellers typically use only a portion of a licensee's capacity, such arrangements should increase the number of competing service providers per market. Interest attribution would only limit the number of eligible resellers in a given market.

II. JOINT MARKETING AGREEMENTS

PRTC, like most commenters, opposes interest attribution for Joint Marketing Agreements ("JMA's") under the PCS Cap, the PCS-cellular cross-ownership restrictions, or the CMRS Cap.⁵ Such agreements benefit both licensees and their customers due to

3. See, e.g., GTE at 8-9; NYNEX at 2-3; McCaw at 2-5.

4. SFNPRM at ¶ 13.

5. See, e.g., CTIA at 9-10 ("the benefits to the public of such agreements far outweigh the risks"); Motorola at 10-11.

efficiencies and economies of scale that can be realized through pooling resources.⁶

There is little cause for concern that parties will gain access to competitive information under JMA's. PRTC believes that JMA's can be established under terms which preclude access to such information. In any event, any anticompetitive conduct that might arise under such an arrangement could be addressed by the Commission under the Communications Act or by the courts under the antitrust laws.⁷

III. MANAGEMENT AGREEMENTS

In the SFNPRM at ¶ 5, the Commission notes that a Management Agreement ("MA") would create an attributable interest if it confers, on a party other than the licensee, de facto control over an FCC-licensed facility. Citing Intermountain, the Commission states that "[i]ssues of de facto control will be determined pursuant to existing precedent."⁸ At a minimum, any MA or similar arrangement which satisfies the Intermountain test⁹ should not be deemed to create an attributable interest to the managing party under the agreement.

6. See SFNPRM at ¶ 14.

7. See SWB at 6.

8. SFNPRM at n.7. Intermountain Microwave, 24 RR 983 (1963).

9. See SFNPRM at ¶ 7.

PRTC believes that the Intermountain criteria must be applied in light of new technological developments and in the context of today's communications environment. For example, virtual networks are likely to evolve in the emerging PCS/CMRS markets.¹⁰ In order to compete with larger established service providers, many new PCS/CMRS providers may seek to fit within existing networks rather than building their own stand-alone networks at substantial cost. Although these licensees may not physically control the overall network, they will control their spectrum and be able to activate/deactivate customers. The network manager (a potentially competing licensee) would not have access to customer lists or similar competitive information. The Commission should clarify that such virtual network arrangements do not result in interest attribution.

Irrespective of the Intermountain test, PRTC believes that if an MA is restricted to a single functional responsibility (e.g., construction, sales, marketing, administration, network planning, maintenance or customer service) -- in effect a subcontractor arrangement -- it should not be treated as an attributable interest. A party limited to providing managerial services in one functional area cannot exercise control over a

10. See, e.g., PCC Management Corp. at 3 ("Licensee principals just cannot have the same hands-on involvement with their communications systems that they did a generation ago.").

licensee and generally will have limited (if any) access to competitive information.¹¹

IV. DESIGNATED ENTITIES

Even if the Commission concludes that management, resale or joint marketing arrangements create attributable interests for the PCS-cellular cross-ownership restrictions, the CMRS Cap or the PCS Cap, parties entering into such arrangements with designated entities should not be subject to attribution. Designated entities may lack the technical and business infrastructure needed to compete in emerging PCS and CMRS markets. Such expertise, however, can be obtained through management agreements and the like. Attribution would disserve the public interest by limiting the number of skilled entities from which designated entities could obtain much needed assistance.¹² Experienced service providers are unlikely to share the benefit of their knowledge, when doing so would limit the amount of spectrum over which they could provide a competing service.

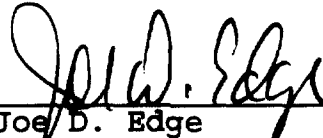
11. MA's also will be important given possible resistance of local commissions and planning boards to granting permits for tower and cell site facilities for up to six new licensees in metropolitan areas.

12. Attribution in the joint marketing and network management context would be particularly harsh for designated entities. Many designated entities are nascent (and small) players in PCS/CMRS and need access to the efficiencies such arrangements offer.

WHEREFORE, PRTC respectfully urges the Commission not to adopt attribution rules for the PCS spectrum cap, the PCS-cellular cross-ownership rules, or the Commercial Mobile Radio Service Spectrum Cap.

August 19, 1994

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink, appearing to read "Joe D. Edge", is written over a horizontal line.

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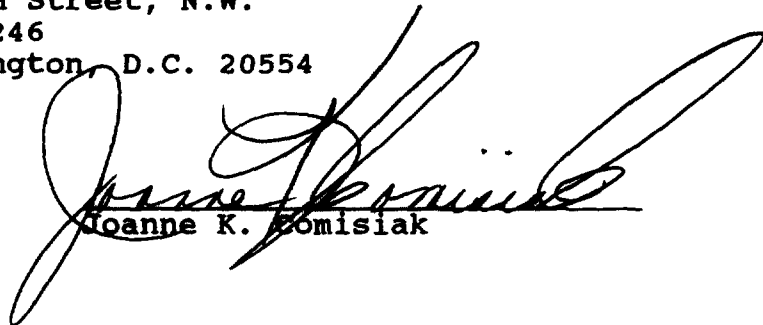
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